



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-M-S-

DATE: MAY 23, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, chief executive officer (CEO) of a search engine optimization firm, seeks classification as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, finding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of a job offer requirement would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner contends that he is an individual of exceptional ability and that his digital marketing work is in the national interest.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six evidentiary criteria, of which an individual must meet at least three in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

Only those who demonstrate “a degree of expertise significantly above that ordinarily encountered” are eligible for classification as individuals of exceptional ability. 8 C.F.R. § 204.5(k)(2).

II. ANALYSIS

The Petitioner indicates that he is CEO of [REDACTED] a search engine optimization firm located in [REDACTED] Florida.² He explains that he “focuses his abilities to reduce complex, instructional matters to lay terms and levels of understanding existent in the public domain,” and that he “deploys an innovative approach to cross-referencing subject-specific materials,” so that complex matters are “presented in an understandable and accessible way.” The Petitioner describes [REDACTED] as a “full 360 digital marketing agency,” and he indicates that he employs 10 part-time content writers who are based throughout the United States. He further explains that he has built over 75 websites since January 2012 and has seven more under contract, and that he has “built a stock of some 620 premium domain names sold through our [REDACTED] website [REDACTED] affiliation.” Additionally, the Petitioner states that “the viability and success of this business revolves around [his] over 20 years of experience in the IT industry.”

A. Evidentiary Criteria for Exceptional Ability

As discussed below, a review of the record indicates the Petitioner does not meet at least three of the relevant evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, the Petitioner does not address the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(E), either in his initial submission, in response to the Director’s request for evidence, nor does the record demonstrate that he meets any of those criteria.³ The only criterion discussed is found at 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.” In support of this criterion, the Petitioner submits several reference letters prepared in support of the petition.

[REDACTED] president of [REDACTED] comments that the Petitioner’s firm was “instrumental” in helping his firm set up a website, delivery process and membership program that “has been directly responsible for the substantial growth of our enterprise.” Similarly [REDACTED] a practicing attorney in [REDACTED] Florida, attests that the Petitioner is “single handedly responsible for more than tripling the number of visitors to our website, launching our social media campaigns, our blogging platform, and increasing our web presence and search engine page results

² The Petitioner submitted a Form G-325A in conjunction with this petition. On that form, he indicates that he has been employed by [REDACTED] at [REDACTED] Florida, from September 2010 until present. The business address listed is the same as the Petitioner’s home address. The Petitioner has not addressed this employment or explained the circumstances of his employment with [REDACTED]. In addition, he has not provided corroborating documentation of his business interests in [REDACTED] such as, for example, formation documents, corporate registration or tax documentation, or employee payroll.

³ We note that while the Petitioner claims more than 10 years of experience in the IT industry, the record does not include evidence in the form of letters from current or former employers documenting his experience as required under 8 C.F.R. § 204.5(k)(3)(ii)(B).

more than three hundred (300%) percent.” He also notes that the continued use of the Petitioner’s company is critical to his firm’s business. While both letters are complementary of the Petitioner’s work, they do not explain how the Petitioner has made significant contributions to the field of search engine optimization, beyond his work for their individual firms. While the Petitioner’s has established successful job performance and commendable work for his clients, he has not documented how his work represents achievements and significant contributions to the industry or field as required.

The remaining letters address the Petitioner’s character, charitable work, and standing in his community. While complementary, they are insufficient to document that he has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. Therefore, the Petitioner has not overcome the Director’s finding that he does not meet the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Accordingly, the evidence does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). Further, a review of the record in the aggregate does not support a finding that he has achieved the level of expertise required for exceptional ability classification.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner does not claim, nor does the record demonstrate, that he is an advanced degree professional and, as discussed above, he has not shown that he is eligible for classification as an individual of exceptional ability. As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot.

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies for classification as an individual of exceptional ability under section 203(b)(2)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of N-M-S-* ID# 457743 (AAO May 23, 2017)